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CompTel/ASCENT
ALLIANCE

ORIGINAL

November 11, 2004

EX PARTE

EX PARTE OR LATE FILED

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *TRO Remand Docket Nos. 01-338, 04-313*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, CompTel/ASCENT ("CompTel") hereby gives notice that on November 9, 2004, Dudley Slater and Greg Scott of Integra Telecom and Mary Albert of CompTel met with Christopher Libertelli and Aaron Goldberger, and on November 10, 2004 met with Commissioner Abernathy and Matt Brill, Commissioner Copps and Jessica Rosenworcel, Commissioner Martin and Dan Gonzalez, and Scott Bergman, to discuss the continuing impairment of facilities-based competitive local exchange carriers without access to unbundled loops, transport and dark fiber. Integra left copies of the attached materials, which set forth its position in detail, with the Commissioners and Staff.

Respectfully submitted,

Mary C. Albert

Mary C. Albert
Vice President, Regulatory Policy

Encl.

cc: Christopher Libertelli (w/o encl.)
Aaron Goldberger (w/o encl.)
Matt Brill (w/o encl.)
Dan Gonzalez (w/o encl.)
Jessica Rosenworcel (w/o encl.)
Scott Bergman (w/o encl.)

integra
TELECOM

November 9 and 10, 2004

Integra Telecom, Inc.

AGENDA

I. Company Overview
II. Recommendations
III. Letter to Senator
IV. Initial Comments of the PUC
V. Initial Comments of Integra Telecom
VI. Reply Comments

INTEGRA TELECOM

Integra Telecom is a competitive local exchange carrier headquartered in Portland, Oregon. The company is only eight years old, created as a direct result of the opening of the Telecom markets to competition via the 1996 Telecom Act. Integra operates in five states: Oregon, Washington, Utah, Minnesota, and North Dakota. The company owns property and equipment and employs local residents in each of these states. All together, Integra employs over 600 people.

Substantial consumer demand from the small to medium sized business market served by Integra is evidenced by Integra's 4th year in a row in the Inc. 500's list of fastest growing companies. Integra became profitable in 2003 and currently has a 10% market share.

The company has invested approximately $156 million in plant and infrastructure and is a "facilities based" carrier. Even as a facilities based carrier that has invested hundreds of millions of dollars in response to the 1996 Telecom Act, Integra still needs access to certain network elements that continue to be monopoly-owned bottlenecks. The network elements to which Integra needs access are DS-0 and DS-1 loops, and DS-1, DS-3, and dark fiber transport.

Integra is not alone: our market research indicates that 99% of the small to medium sized business market is served by companies using the Bell Company wire line network. Cable and wireless providers are not serving the small to medium sized business market as a local exchange carrier. This means that every competitive company serving this market needs access to the same network elements that Integra needs.

Our success makes clear that the marketplace values Integra's products and services. Integra asks that Government not favor one technology or company over another. Integra believes the marketplace, not Government, should decide which technologies or competitors succeed and which fail. We ask Government to create a level playing field through balanced, fair regulation, and then step back.

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integra TELECOM

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Integra Telecom
Recommendations to the FCC

Permanent Unbundling Rules

- Create a class of customers called "small to medium sized businesses", defined as businesses with 96 or fewer access lines at any one location.
- Find CLECs serving this customer class are impaired on a national basis without access to DS-0 and DS-1 loops and DS-1, DS-3, and dark fiber transport.

Key Findings of Integra's Impairment Analysis

Loops

- Wireline carriers serve 99% of the small to medium sized business market.
- 89 of Integra's largest 100 customers, averaging 95 access lines at one location, have only the ILEC loop to their premises.
- 97 of Integra's 100 largest customers do not have competitive loops.
- 99.99% of Integra's total customer base, averaging 8 access lines, has only the ILEC loop.
- There is no wholesale market for loops within Integra's five state serving area.
- Special access pricing increases Integra's monthly loop costs by 220% to 500% .

Transport

- Only the ILEC has transport connecting all of the central offices in which Integra is collocated.
- The small to medium sized business market is very widespread, with 94% of businesses throughout an ILEC's network being potential Integra customers. Competitors serving this market require transport that covers all end offices that serve businesses. Alternative transport providers have not built networks to serve this market; rather they built networks to serve large, enterprise customers in specific business corridors.
- Alternative providers connect less than 1% of Integra's potential customers.
- Seattle: offers more alternative transport than any other Integra market, yet the largest transport provider can only connect 5 of the 12 central offices in which Integra is collocated; cost to Integra of using those 5 connections is 500% per month increase in out of pocket costs plus increased maintenance expense and "daisy chaining" issues.
- Eliminating dark fiber as a UNE increases Integra's costs by 9,872% per month.

integra TELECOM

www.integratelecom.com

Pricing of 271 Unbundled Network Elements

- Prices must be nondiscriminatory under section 202.
- Nondiscriminatory means that the prices the RBOC charges itself must be compared with the prices charged competitors.
- Current TELRIC prices in some states are discriminatory.
    - Utah: Integra wholesale loop cost-**$11.63**
        - Qwest retail price-**$11.03**
        - Qwest retail price less costs of switching and channel
        - Termination equals Qwest maximum loop cost-**$7.11**
    - Oregon: Integra loop cost-**$13.95**
        - Qwest retail price-**$12.80** urban, **$14.80** rural
        - Qwest retail price less costs of switching and channel
        - Termination equals Qwest maximum loop
        - Costs-**$10.59** urban, **$12.59** rural.
- Integra wholesale loop costs are significantly higher than Qwest loop costs, making Integra TELRIC wholesale loop costs discriminatory under 202.

Definition of "mass market" in FTTH and FTTC orders

- Clarify that "mass market" means residential customers.
    - "H" in FTTH stands for "home", not business
    - In the TRO, the FCC describes the deployment of FTTH as "26,000 homes." Par. 227
    - In the TRO, dark fiber is available to enterprise customers, distinguishing them from residential customers.
    - Choice for small businesses should be encouraged as a driver of economic growth.
    - A clear definition is necessary to avoid disputes in the field; "residential customer" is the clearest line.

United States Senate

WASHINGTON, DC 20510

September 20, 2004

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Powell:

We are writing about the ongoing efforts of the Federal Communications Commission (FCC) to establish rules to implement the network unbundling provisions of the Telecommunications Act of 1996. As you well know, these provisions have been the subject of intense lobbying and protracted litigation ever since the Act's inception. Furthermore, some of the competitive carriers that originally hoped to take advantage of these provisions have gone bankrupt and disappeared. Our purpose in writing today is to emphasize that, despite all this, there are carriers who have successfully employed unbundling strategies, as envisioned by the Act, to bring new, facilities-based competition to the telecommunications market. As you revise the rules, the legitimate expectations of such carriers – and in turn, of the customers that have embraced the competition they offer -- should be protected.

A prime example of a competitive local exchange carrier using unbundled network elements is Integra Telecom, a Portland-based company employing more than 600 people. Integra has invested hundreds of millions of dollars since 1996 in switches and other network infrastructure. But a new competitor cannot afford to duplicate the entire local exchange network. So Integra relies on access to unbundled loops and transport from the incumbent.

Much of the controversy over the Act's unbundling provisions has focused on the so-called "UNE Platform." But regardless of one's position on that issue, it seems relatively straightforward that the activities of a carrier like Integra -- investing in its own facilities while relying on guaranteed access to certain key incumbent facilities to round out its network – fall safely within the scope of what the unbundling provisions were designed to permit.

Going forward, please keep in mind that the investments of Integra and similar companies were based on the reasonable expectation that, unless and until the 1996 Act is rewritten by Congress, key network elements that meet the impairment test set forth in section 251(d)(2)(B) will continue to be available on an unbundled basis at cost-based

prices. Any rule changes that rely on purely commercial negotiations for network element access could frustrate these expectations, because where the incumbent is the only source of the needed facilities, it arguably has an incentive to seek prices or other terms that squeeze out competitors.

In short, as your rulemakings in this area proceed, we would ask that you take care not to jeopardize the successful efforts of carriers like Integra to deliver meaningful competition using the unbundling mechanism provided for in the 1996 Act.

Thank you for your consideration.

Sincerely,

Ron Wyden
United States Senator

Gordon H. Smith
United States Senator

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338

Initial comments of the Public Utility Commission of Oregon

The Public Utility Commission of Oregon (PUC) submits the following information to aid the FCC (Commission) in the above-captioned proceedings:

1. The PUC opened an investigation of impairment for mass market switching in response to a petition filed by Qwest Corporation. The investigation was closed on June 23, 2004, in light of the decision of the United States Court of Appeals for the District of Columbia to allow its mandate in USTA II to take effect on June 15, 2004. At the time the investigation was closed, the parties had conducted some discovery, but no testimony was filed, no hearings were held, no record was created, and no conclusions were reached by the PUC.
2. The PUC did not open an investigation of impairment for high capacity dedicated transport and enterprise loops. Qwest Corporation did not challenge the Commission's impairment findings with regard to these network elements in Oregon.

We urge the Commission to affirm its findings of impairment for mass market switching, high capacity dedicated transport, and enterprise loops. The growth of competition in Oregon has been steady, particularly for business services. Since 1999 we have done an annual survey of companies certified to provide telecommunications service in Oregon. Our surveys show the total CLEC share of switched access lines has grown from 6 percent to 14 percent. The CLEC share of business switched access lines has grown from 11 percent to 30 percent. We are especially concerned about the affect the loss of dedicated transport and enterprise loops would have on business competition. Even competitors with their own switches are heavily reliant on these network elements.

One such CLEC is Integra Telecom, an Oregon-based CLEC operating in five states. We urge the Commission to carefully consider Integra's comments in these proceedings. In its comments, Integra presents a substantial impairment analysis for dedicated transport and enterprise loops under section 251(d)(2)(B) of the Telecommunications Act of 1996.

We believe this analysis demonstrates that companies such as Integra are impaired without access to these network elements. We believe Integra has provided compelling evidence that it has no practical and economic alternative to buying transport from Qwest and Verizon. We are also persuaded that purchasing special access is not a reasonable alternative.

Regarding enterprise loops, Integra demonstrates that 99.9999 percent of loops used by its customers were provisioned by an ILEC, and that CLECs that have tried to self-provision loops have suffered insolvency. This provides strong evidence for maintaining the enterprise loop as an unbundled network element.

In its comments, Integra also address the matter of pricing for section 271 network elements. We endorse Integra's request that the Commission choose one of the following alternatives for the pricing of such elements: (1) the prices for network elements in place when a BOC received section 271 approval; (2) prices based upon the TELRIC methodology in place when a BOC received section 271 approval; or, (3) the network element prices that BOCs impute to themselves when determining their own retail pricing.

Finally, we want the Commission to understand our view that line sharing must be retained as an unbundled network element. Our view is based heavily on our desire for every Oregonian to have access to broadband service. We have found that not all ILECs are willing to offer DSL service in rural Oregon. We are convinced that entrepreneurial CLECs will be severely hampered in their efforts to provide DSL in these rural areas without access to line sharing. The retention of line sharing would also encourage competition for broadband customers in urban areas.

Lee Beyer Chairman	John Savage Commissioner	Ray Baum Commissioner

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	**WC Docket**
Unbundled Access to	)	**No. 04-313**
Network Elements	)	
Review of the	)	
Section 251 Unbundling Obligations	)	**CC Docket**
For Incumbent Local Exchange	)	**No. 01-338**
Carriers	)	

Initial Comments of Integra Telecom

Summary

Integra Telecom comments on two different issues: First, Integra Telecom addresses the impairment analysis of section 251(d)(2)(B) of the 1996 Telecom Act. Integra asks the FCC to create a class of customers called "small to medium sized business customers," defined as customers with no more than 96 access lines at one location. This class of customers is distinct from mass market and enterprise customers. Having defined this class, the FCC should find impairment under section 251(d)(2)(B) of the 1996 Telecom Act for CLECs serving this class for the following ILEC products: DS-0 and DS-1 loops; (including EELS) DS-1, DS-3, and dark fiber Transport.

In support of this request, Integra conducted an extensive impairment analysis of loops and transport in the specific markets in which it serves. This analysis provides the FCC with the factual record it needs to determine that the small to medium sized business customer is a unique and distinct class; to determine that self-provisioning of loops and transport to this customer class is economically and operationally impossible; to determine that there is no wholesale market for loops and transport for this customer class sufficient to eliminate an ILEC's obligation to unbundle; and to determine that special access is not an economically or operationally viable method of serving this customer class.

The impairment analysis begins on page 5 and continues through page 39.

The second category of comments addresses pricing for section 271 network elements. Integra asks the FCC to further define "just and reasonable" by choosing a pricing methodology that state commissions apply in individual state proceedings, mirroring how pricing decisions have been made under the 1996 Telecom Act. Integra believes the FCC should choose among three alternatives: the prices for network elements that were in place when a BOC was given 271 approval; the TELRIC methodology that was in place when a BOC received 271 approval; or the network element prices that BOCs impute to themselves when determining their own retail pricing. The anti-discrimination provision of section 202 of the Communications Act of 1934 requires that how the BOC treats itself be included in the analysis of what is discriminatory vis-à-vis a CLEC. These comments begin on page 39 and continue through page 44.

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V. PRICING STANDARDS FOR NETWORK ELEMENTS OBTAINED UNDER SECTION 271 OF THE TELECOM ACT OF 1996.

A. BOCs have an Independent Obligation to Provide Access to Loops and Transport under Section 271.
B. The Pricing of Section 271 Elements Must Take into Account the Congressional Intent to Open the Telecom Markets to Competition.
    i. The Same Prices That Were in Place When the BOC Received 271 Approval Should be Charged for Network Elements Today.
    ii. At the Very Least, the Same Pricing Methodology That was in Place When the BOC Received 271 Approval Should be Used to Price Network Elements Today: TELRIC.
C. The FCC Should Create a Class Under Section 201(b) of the Communications Act of 1934 Entitled "The CLEC" Class.
D. BOC Charges and Practices for the CLEC Class Cannot be Unjust, Unreasonable, or Discriminatory Pursuant to Section 202 of the Communications Act of 1934.
    i. The Anti-Discrimination Provision, On Its Own, and Especially When Combined With The Purpose of 271, Requires That The Costs The BOCs Use for Loops and Transport Be Included in the Discrimination Analysis.
    ii. The Anti-Discrimination Provision of Section 202 Mandates that CLECs Not Pay More for Unbundled Network Elements than BOCs Charge Themselves for the Same Elements.
E. Consistent With Pricing Schemes in the 1996 Telecom Act, the FCC Should Establish the Methodology and the States Should Implement It.
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Appendix A: Affidavit of Dudley Slater

Appendix B: Map and Description of MSAs and States in Which Integra Telecom Currently Does Business

Appendix C: Affidavit of John Nee

Appendix D: Affidavit of Bill Littler

Appendix E: Affidavit of Dave Bennett

I. Introduction

Integra Telecom asks the FCC to create a class of customers called "small to medium sized business customers," defined as customers with no more than 96 access lines at one location. This class of customers is distinct from mass market and enterprise customers. Having defined this class, the FCC should find impairment under section 251(d)(2)(B) of the 1996 Telecom Act for CLECs serving this class with the following ILEC products: DS-0 and DS-1 loops; (including EELS) DS-1, DS-3, and dark fiber Transport.

In support of this request, Integra has conducted an extensive analysis of loops and transport in the specific markets in which it serves. This analysis provides the FCC with the factual record it needs to determine that the small to medium size business customer is a unique and distinct class; to determine that self-provisioning of loops and transport to this customer is economically and operationally impossible; to determine that there is no wholesale market for loops and transport for this customer class sufficient to eliminate an ILEC's obligation to provide unbundled network elements; and to determine that special access is not an economically or operationally viable method of serving this customer class.

This impairment analysis is conducted in compliance with the decision of the D.C. Circuit court in USTA v. FCC, 359 F.3d 554 (D.C. Cir. 2004)("USTA II"), and the decision of the same court in USTA v. FCC, 290 F.3d 415 (D.C. Cir. 2002)("USTA I"). The analysis supporting the request also incorporates portions of the FCC's decision in the Triennial Review Order, 18 FCC Rcd 16978 (2003). Finally, the analysis also incorporates portions of the recently issued FCC Notice In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313, CC Docket No. 01-338.

II. Integra's Market: Unique Characteristics of the Company and the Customer.

A. Integra Telecom: hundreds of millions of dollars invested.

Integra Telecom is a facilities-based CLEC headquartered in Portland, Oregon. The Company was started in 1996 as a direct consequence of the 1996 Telecom Act opening the telecom markets to competition. Integra does business in five states and employs over 600 people. It has invested approximately $300 million in switches, co-location, transport, infrastructure, and other start-up costs. The company receives no support from federal or state universal service funds. While Integra has some UNE-P lines (less than 5%), the Company has not relied on UNE-P for its success.

The marketplace has embraced the products and services Integra offers. Integra has grown from 3,800 access lines in 1996 to 73,000 in 2000 to over 200,000 today. Since Integra's entry into the market, Integra's retail prices for small to medium sized business customers have fallen approximately 5%, per year. Affidavit of Dudley Slater, Appendix A.

Integra customers are served with an almost even mix of DS-0 and DS-1 loops: 44% DS-1 and 56% DS-0. This means that the continued availability of DS-1 loops is critical to Integra's future. Integra's network is built in a multiple ring configuration, with dark fiber transport connecting each collocation. DS-1, DS-3, and dark fiber transport are critical to Integra's success.

Integra operates its own data network. The Company is poised to launch a VOIP offering to both residential and small to medium sized business customers. However, Integra can only launch facilities-based VOIP if it has continued access to DS-0 and DS-1 loops and DS-1, DS-3, and dark fiber transport. The success of Integra as a broadband provider depends upon the continued availability of loops and transport. Affidavit of Dudley Slater, Appendix A.

B. Average Integra customer has eight access lines and is not located in a large, densely populated MSA.

Integra Telecom currently serves a very specific, very identifiable segment of the marketplace: small to medium sized business customers. The average Integra Telecom business customer has eight access lines at one location, generating less than $400 per month in revenue. These customers have no in-house telecom expertise and rely on Integra Telecom for technical advice and design.

The geographic area served by Integra is depicted generally in Appendix B. Integra serves business customers in five states: Minnesota, North Dakota, Oregon, Utah, and Washington. On average, these states are sparsely populated. For example, North Dakota is ranked 47 out of 50 in population, with 50 being the smallest population; Utah is 34 of 50; Oregon 28 of 50; Minnesota, 21; Washington, 15. See Chart in Appendix B. These are not the densely populated areas of the East Coast.

Integra's serving areas include the following metropolitan and micropolitan statistical areas: Portland (and Vancouver, Washington), Salem, McMinnville, and Eugene in the state of Oregon; Seattle, Tacoma, and Everett in the state of Washington; Salt Lake City, Provo, Park City, and Ogden in the state of Utah; Fargo and Grand Forks in the state of North Dakota; Moorhead, Duluth, Brainerd, Baxter, Nisswa, Little Falls, St. Cloud, Minneapolis, and St. Paul in the state of Minnesota.

Out of a total of 20 metropolitan service areas, only five are in the top 100 largest MSAs. The average ranking for the 5 in the top 100 is 36. The majority of Integra's service area is in small, more sparsely populated states. See Appendix B for a ranking of Integra's service areas in the 100 largest MSAs.

Integra's potential small to medium sized business customers are broadly dispersed throughout the geographic markets in which Integra serves. They are not nicely clustered in large office buildings or new developments. On average, 94% of the businesses in a given market are small to medium sized businesses that are potential Integra customers. This means that Integra must be connected to a network that is as broadly dispersed and far reaching as its potential customer base. See Exhibit D to the

Affidavit of John Nee, Appendix C.

Qwest is the dominant ILEC in these five states. Verizon is also a dominant ILEC in portions of Oregon and Washington as a result of its acquisition of GTE properties.

C. Small to medium sized businesses are a stand-alone market.

Integra customers are not the large users of telecommunications services with in-house telecom expertise that AT&T, MCI, and Time-Warner are serving with direct fiber on the East coast. They are not the customers Verizon describes in its filings with the FCC. (See, e.g., July 2, 2004 ex parte filing by Michael Glover) Ninety-nine point eight percent (99.8%) of Integra's retail customers have fewer than 96 access lines at any one location. Exhibit C to Appendix C, Affidavit of John Nee. The 100 largest retail customers average only 95 access lines per one location. The average Integra customer has only 8 access lines at one location. Appendix E, Affidavit of Dave Bennett. This is a separate, unique, stand-alone portion of the marketplace that is closer to mass market than enterprise market. This market segment, and the companies who seek to provide services to them, have a distinct, independent identity that must be recognized and treated as such.

III. Impairment methodology for loops and transport: a multiple-step approach focusing on the law and a specific market.

Integra is well aware of the admonitions in USTA I and USTA II that the impairment analysis be focused on the specifics of the marketplace. In USTA I, the court made clear that the Act does not necessarily require the FCC to focus on a localized state-by-state or market-by-market analysis, but must have a "...*nuanced concept of impairment*..." connected in some way to specific markets or specific market categories. The USTA II decision often lamented the lack of explanation for how alternatives were considered, or why the FCC reached the conclusions it did.

Combining the messages from these two cases, Integra has conducted a loop and transport impairment analysis that focuses on the nuances of the specific market it serves, and explains why the significant economic and operational barriers to self-provisioning loops and transport support a finding of impairment. Further, Integra heard the USTA II message to consider special access and explain why it is not a viable alternative before seeking unbundled network elements from the ILEC. Integra does all of these things, weaving in guidance given by the FCC in the TRO as appropriate.

The comments begin with an over-view of the Loop impairment analysis (section A), then move to the specifics of the loop analysis (sections B through I), then examine Transport impairment (section IV). Following the Transport impairment analysis are comments on the pricing of section 271 network elements.

A. An Overview of the Loop Impairment Analysis

The focus of Integra's loop impairment analysis is on the target market we serve: small to medium sized business customers, located in certain MSAs and service areas surrounding those MSAs. The question we answer is "What economically and operationally feasible alternatives are available to Integra beyond ILEC unbundled network elements?"

To answer this question, we set up a methodology designed to do the following: first, identify the competing carriers in our marketplace and determine if they have self-provisioned any loops that compete with ILEC loops and, if so, if those loops are available for wholesale lease, such that Qwest and Verizon should no longer be required to unbundled loops; second, determine if any of our identified competitors are cable, satellite, or wireless companies, to address the popular view that all markets are served by these inter-modal companies; third, examine our own 100 largest retail customers, the largest 25 in each of four markets, showing that the vast majority of them do not have alternative loops to their premises, with logic dictating that the remaining 99.96% of Integra's customer base, averaging just 8 access lines per location, also do not have alternative loops to their premises; fourth, analyze the operational and economic barriers to self-provisioning loops to our target market, an analysis required by USTA I and the TRO; lastly, having read USTA II, analyze special access as a substitute for unbundled loops.

Identifying all competitive alternatives and analyzing our specific customer base serves two main purposes: First, as described above, identifying all competitive carriers allows Integra to determine which companies have self-provisioned loops that are competitive with ILEC loops and available for wholesale lease by Integra, and which competitors rely on unbundled network elements. This information addresses both whether Integra should be expected to self-provision loops because others have and whether there is a wholesale market for loops serving Integra's customer base sufficient to eliminate the ILEC's obligation to provide unbundled loops.

Second, analyzing our specific customer base allows us to determine whether customers have alternative loops provisioned to their premises, also addressing the issue of whether there is a competitive wholesale market for loops. The two issues over-lap, of course. Analyzing specific customer demarks for multiple loops also results in identifying competitors when non-ILEC loops are present. To be as comprehensive as possible, Integra identifies competitors and analyzes its customer base utilizing a number of different approaches.

First, Integra retained an independent company to conduct a statistically valid survey of all businesses located in our five largest MSAs, with 96 or fewer access lines at any one location, asking them to identify their current local telephone service provider (see section B); second, as part of its marketing program, Integra surveyed customers who left for other carriers, asking them to identify where they went (section B); third, Integra analyzed the demarks at the 25 largest customers in each of its four markets and determined which customers had non-ILEC loops and the identity of the non-ILEC loop

provider (section C); lastly, two Integra service technicians in each market observed the demarks for all customers they serviced during a one week period determining which customers had non-ILEC loops and identifying the non-ILEC loop provider (section D). See also, Exhibit B to Appendix C, Affidavit of John Nee.

Each approach to identifying competitors and analyzing our customer base will be analyzed in turn.

B. Loop Impairment Methodology: A statistically valid, independent survey of all businesses within Integra's target market to identify companies competing with Integra for its target business customer.

Integra Telecom retained an independent, unaffiliated, outside vendor, Riley Research Associates, to conduct a blind (participants were not told that Integra provisioned the study) survey of businesses fitting the profile of Integra's target customer. These businesses were served out of rate centers located in the five largest MSAs (Portland, Seattle, Tacoma, Salt Lake, and Minneapolis/St. Paul) in which Integra does business, with 96 or fewer access lines at any one location. Riley randomly chose businesses fitting this profile and asked them to identify their current local telephone service provider. A total of 1,944 businesses responded to the survey, resulting in a statistically valid representation of each of the five MSAs. The protocol for the survey and the results of the survey are described in Appendix C, Affidavit of John Nee.

The results of the survey are important for three basic reasons: First, the companies actually competing with Integra for its target business customers in the five largest MSAs are now known. These are not just companies with certificates of authority from state Public Utility Commissions; these are carriers actually competing in the marketplace.

The competitors identified in the independent survey are: Integra, AT&T, Eschelon, McLeod, Allegiance/XO, Popp, ATG (Advanced Telecom Group), Comcast, MCI, Sprint, US Link, ELI, and Tel West.

The competitors identified in the internal market survey of where customers go upon leaving Integra are: Eschelon, US Link, McLeod, Verizon, Popp, and Allegiance/XO. See Appendix C, Affidavit of John Nee.

Second, the survey data makes clear that a view of the Telecom marketplace that has cable, wireless, and satellite providers as the bastions of choice is simply wrong for Integra Telecom's marketplace. These types of carriers do not compete in Integra's marketplace for Integra's target customers and therefore play no role in an impairment analysis.

None of the local service providers identified in the independent or internal surveys were a wireless or satellite company. Only one cable company appeared in the independent survey, with a total of 20 customers out of 1,944.[1] Which leads to the third and most important point:

Twelve of the thirteen local service providers identified in the independent survey are wire-line telephony CLECs, all of whom rely on either UNE-P or UNE-L to serve their customers. These wire-line CLECs, when added together with the ILECs, hold 99.99% of the market for small to medium sized business customers in Integra's geographic market. Likewise, all of the local service providers identified in the Integra internal market survey are wire-line telephony CLECs relying on either UNE-P or UNE-L. See Affidavit of John Nee, Appendix C.

Having a choice of local service providers as a retail customer in Integra's marketplace means a choice brought to the retail customer by wire-line telephony providers, all of whom need loops and transport from the ILEC to serve customers. If the FCC fails to facilitate wire-line CLECs, it destroys retail choice for this customer class.

Eight years after the passage of the Telecom Act, it is not cable, satellite, and wireless technologies that have brought choice to the small to medium-sized business market. Retail choice for businesses in Integra's market is solely attributable to wire-line CLECs. Wire-line CLECs are the bastions of competition; the purveyors of choice. This is why USTA II correctly insists on a focused approach to the impairment analysis.

There is great danger in making Telecom policy based on mistaken notions of which technologies and providers are "right" or "the future". This is why it is important for policy makers to remain neutral, create a level playing field, and let the marketplace choose winners and losers.

It is also important to understand that, eight years after the passage of the Telecom Act, the ILEC monopoly has moved, not vanished. The retail monopoly that once prevented retail customer choice is now gone, thanks to wire-line CLECs. However, the monopoly is alive and well and living in the wholesale world. The companies responsible for bringing choice to retail customers are themselves subject to the monopoly. What once was a retail monopoly is now a wholesale monopoly. The retail customers that rely on wire-line CLECs for retail choice only have that choice if wire-line CLECs continue to have access to monopoly owned loops and transport.

There is really no reason to continue reviewing the monopoly status of loops and transport to the Integra customer base. The ILEC's position as the only carrier that has loops and transport to every potential Integra customer will not change. The Telecom Act recognizes that the ILEC network is a natural monopoly and that is the reason why the Telecom Act gives competitors access to the ILEC network. No company can afford

[1] Comcast does not appear to have a tariffed business offering in the State of Washington. See Affidavit of John Nee, Appendix C. Given that Comcast's market share is already statistically insignificant, there is no need to belabor the point.

to duplicate the ILEC network unless it has what the ILEC had when it built it: a 100% market share and a guaranteed rate of return.

Will any company ever duplicate the ILEC network? As explained throughout these comments, the economics do not support replication by wire-line CLECs. For a company to replicate the ILEC network, it would have to enjoy market position similar to that which telecom ILECs had when they built their networks. What other company has a 100% market share and government- guaranteed returns? The cable company comes close to being similarly situated.

If one accepts the argument that the cable companies will replicate the network, then one must ask, "Will wire-line telephony CLECs no longer need access to ILEC loops and transport?" Yes, of course they will. Why? Neither cable, satellite, nor wireless companies are required to make their loops and transport available for wholesale lease, and they do not do so voluntarily. So, the presence of any of these inter-modal providers in any given market, even one that has completely replicated the ILEC network, has no meaning to wire-line telephony CLECs. Even in markets where an inter-modal company has significant market share and significant infrastructure, absent a change in the law requiring the wholesale availability of loops and transport, wire-line CLECs will still be impaired without access to ILEC loops and transport.

There is no relationship between a BOC's obligation to make its loops and transport available to wire-line CLECs and the presence of inter-modal competitors. Section 251(d)(2) of the Telecom Act of 1996 requires unbundled network elements to be made available by an ILEC if "the failure to provide access to such network elements would impair the ability **of the telecommunications carrier seeking access** to provide the services that **it seeks to offer**." The question is whether Integra, as the requesting carrier, is impaired without access to Qwest/Verizon network elements, for the services that Integra seeks to offer, not whether Qwest or Verizon is losing market share to a cable company. The Telecom Act does not permit the creation of a duopoly, consisting of monopoly cable companies and monopoly ILECs.

VOIP/broadband is touted as the technology of the future. Policy makers must remember that every wire-line CLEC with a facilities-based data network, like Integra, is a potential purveyor of broadband/VOIP technology. Failure to facilitate wire-line competition is a failure to facilitate the future.

Every CLEC in Integra's marketplace today needs access to loops and transport to serve a customer base that is broadly dispersed throughout the geographic market. If loops and transport are not available in the wholesale market, wire-line CLECs must get these critical elements from the ILECs.

C. Loop Impairment methodology-focus on Integra's top 100: the largest 25 retail business customers in each of four markets.

To further determine which carriers have self-provisioned loops, and to underscore the uniqueness of Integra's marketplace, Integra analyzed the demarcation points for its 25

largest retail customers in each of the four markets it serves (Minnesota and North Dakota were combined, so the four are Minnesota/North Dakota, Washington, Oregon, and Utah). By analyzing the demarcation points, Integra can tell if companies other than

the ILEC have provisioned a loop to a building. To the extent they have, these carriers can be contacted and asked about the availability of those loops for wholesale lease by Integra. Also, if companies have not provisioned loops to a majority of Integra's largest customers, this is an important distinction between Integra's customer base and the customer base of the large, institutional CLECs like AT&T and MCI.

Table 1-Integra's average customer is a small business

Total number Of Integra retail Business customers	Top 100 As a % of Total customers	Total Access lines For Top 100	Average access lines for the top 100	Total access lines for remaining 25,680 customers	Average access lines for 99.6% of Integra customers
25,780	.003894	9,468	95	211,532	8

Integra's largest 25 retail business customers in each of four markets comprise less than four-tenths of 1% of Integra's total customer base--.00389. The largest customer has 408 access lines at one location. The average number of access lines for this customer group is 95. The average number of access lines for all Integra customers is 8. This means that the vast majority of Integra customers use dramatically fewer access lines than the 100 largest customers. If a majority of customers with 95 access lines do not have competitive loops, it follows that customers with only 8 access lines also do not have competitive loops.

To justify a conclusion that a CLEC is not impaired without the ILEC loop, a customer would have to have at least two companies, in addition to the ILEC, with loops to the customer's premise, both willing to make their loops available for wholesale lease. There are two elements to this equation: first, there must be at least two companies with loops, in addition to the ILEC loop. Integra refers to this scenario as a "competitive loop" scenario, to be distinguished from situations where there is only one non-ILEC loop to a premise. Only one company providing a loop is not a competitive situation. As soon as this company knows that the ILEC no longer has to provide the loop as a UNE, this company now knows that it has become the monopolist. Trading one monopolist for another is not what the impairment analysis is about.

Second, the companies with loops must be willing or required to lease those loops. If companies with loops are not willing or required to lease them, then those loops are not competitive and play no role in an impairment analysis.

The analysis in this section addresses the first point, the number of loops to a given premise. The analysis in section III.E addresses the second point, the willingness of a company to make the loop available for wholesale lease.

Table 2-Analysis of 25 Largest Customers in Each Geographic Market

	MN/ND	WA	UT	OR	Total
Number of customers with competitive loops (two or more non-ILEC loops)	2	1	0	0	3/100
Number of customers with non-competitive loops (only one non-ILEC loop)	4	1	3	0	8/100
Number of customers with only the ILEC loop.	19/25	23/25	22/25	25/25	89/100

In the state of Washington, only one customer has a competitive loop scenario, with two providers of loops other than the ILEC. Another customer has just one alternative loop. The companies with demarcations at these two customers are ELI and MCI at one and Click Networks at the other.

The remaining 23 largest customers in the state of Washington, with an average of 97 access lines per location, have only the ILEC loop running to their premises.

In the state of Oregon, none of the 25 largest customers, with an average of 110 access lines at one location, has loops provisioned by an alternate provider.[2]

In the state of Utah, no customers have competitive loops. Three of the 25 have loops from only one alternate provider. All three loops were provisioned by ELI. None of the other 22 customers, with an average of 67 access lines per location, has any alternate provider loops.

In the Minnesota/North Dakota market, only two customers have competitive loop scenarios. Four of the 25 largest customers have loops from just one alternate provider. The companies that provisioned loops are: Winstar, GST/Time-Warner, Onvoy, SHAL, and Eventis.

The remaining 19 customers, with an average of 76 access lines per location, have only the ILEC loop running to their premises. See Affidavit of Dave Bennett, Appendix E.

In substantially all of the above instances where non-ILEC loops are present, these loops terminate in large office buildings or commercial complexes, typically associated with large enterprise customers. These buildings do not represent the broad, ubiquitous distribution of the class of customers served by Integra.

[2] Pre-Telecom Act of 1996, the Oregon Graduate Institute provisioned loops for connecting its buildings with its PBX. The founders of Integra acquired the Oregon Graduate Institute's telecom service in 1996, so the loops provisioned by the Institute to serve itself show up today as Integra loops. These pre-Telecom Act loops provisioned by a customer to serve its own needs are not the type of loops under scrutiny in an impairment analysis. *Integra only identifies this issue in the interest of full disclosure.*

Table 3-Percent of customers with competitive loops

Total number of Access lines held by the 25 largest customers in each geographic market	Average number of access lines for the 25 largest customers in each geographic market	Number of customers with loops from two or more carriers other than the ILEC	Percentage of top 100 customers with loops from two or more carriers other than the ILEC	Over-all percentage of Integra customers with competitive loops
9,468	95	3	3%	3% of .003894 or .0001168

This means that 97% of Integra's 100 largest customers, averaging 95 access lines per customer location, do not have competitive loops to their premises. Eighty-nine percent have only the ILEC loop. Certainly, if 97% of Integra's largest 100 customers do not have competitive loops, and 89% have only the ILEC loop, a customer-by-customer inspection is not necessary to conclude that the remaining customers, with an average of 8 access lines, do not have multiple loops to their premises. To illustrate the point by looking at the total number of Integra business customers: 99.9999% of Integra customers do not have competitive loops. See Appendix D, Affidavit of Bill Littler.

The carriers that provisioned loops are identified as ELI, MCI, Click Networks, Winstar, Onvoy, SHAL, Enventis, and GST/Time-Warner. The carriers not already appearing in the independent survey are Click Networks, Winstar, Onvoy, SHAL, and Eventis. These carriers will be added to the list of carriers who are contacted or about whom information is gathered to determine if their loops are competitive with ILEC loops and are available for wholesale lease by Integra. See section III.E.

D. Loop Impairment methodology-survey of demarcations by service technicians.

In addition to the independent survey and the analysis of the twenty-five largest customers in each geographic market, Integra also conducted a service technician survey of demarcation points. Two Integra Telecom service technicians in each of Integra's four market areas were asked to observe the demarcation points for customers for whom new installs or trouble tickets were done during the period July 27, 2004 through August 2, 2004. This is another way of distinguishing the Integra customer base from the Enterprise market.

Table 4-Integra Service Technician survey data

Total Demarks Visited:	Number of customers with Competitive loops (two non-ILEC loops)	Number of customers with one non-ILEC loop	Percentage of customers with no competitive loops/only one non-ILEC loop
188	1	5	99.995/97.0

During this one-week period, a total of 188 demarcation points were surveyed. Only 1 customer had a competitive loop scenario. That customer was located at the airport where three companies had provisioned loops: Light Point, ELI, and Time-Warner. Five other customers had only one loop in addition to the ILEC loop. The loops for these five customers were provisioned by XO and ELI. This means that 99.995% of Integra customers, chosen randomly during this one-week period, had no competitive loop scenario, and 97% had only the ILEC loop to their premises.

ELI, GST/Time-Warner, and XO are already identified as carriers that have self-provisioned loops. Light Point is a new carrier added to the list of companies about whom information is gathered. We now turn to these carriers.

E. **Loop Impairment Methodology: The availability of loops from alternate suppliers.**

The notion that there is a ubiquitous, robust wholesale market for loops and transport led by friendly CLECs who socialize and plot business strategy together is simply wrong. To the contrary, the CLEC world is characterized by fierce competition, and Non-Disclosure Agreements that preclude employees like Bill Littler and Dave Bennett from disclosing any information they learn about a competitor's network to third parties. See Affidavits of Littler and Bennett, Appendices D and E. These agreements severely limit the amount of detailed information Integra can disclose in this filing. This is not a free-flowing, glad-to-lease-you-a-loop-world; Integra has Non-disclosure agreements with 18 of the 23 identified carriers. Affidavit of Bill Littler, Appendix D.

Bill Littler, Director of Carrier Services for Integra, gathered information about each of the carriers identified in the independent survey, the internal survey, the analysis of the largest 25 customers in each market, and the service technician survey.

Exhibit A to Appendix D compiles information about the availability of loops from all of these carriers. The information in the chart is based on a combination of telephone contacts and general industry information, within the confines of the Non-disclosure Agreements. The chart addresses every company identified in either the independent or internal surveys, in the analysis of Integra's largest customers, or in the service technician surveys. XO includes Allegiance because XO bought Allegiance's assets out of bankruptcy.

No company other than Qwest and Verizon have loops available to the entire Integra customer base, which is 94% of all businesses located in a given geographic market. See Exhibit D to the Affidavit of John Nee, Appendix C. In fact, because Integra targets small to medium sized businesses, and because alternative loop providers target the largest business locations, it is fair to say that the loops of alternative providers connect with the 6% of businesses that Integra does not serve. Therefore, alternative provider loops are of no value to Integra.

To further illustrate the point: based on Integra's research and analysis, another anonymous ATP has 101 buildings connected to its network in the **entire** greater Seattle area (Seattle, Bellevue, Everett, and Tacoma). This is the broadest foot-print of any